

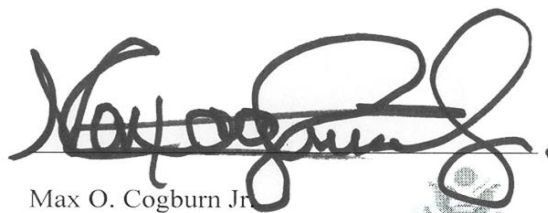
Second, petitioner makes an interesting argument distinguishing respondent's reliance on United States v. Foote, 784 F.3d 931 (4th Cir. 2015), by arguing that he was sentenced under the then *mandatory* guidelines while *Foote* was sentenced under the now advisory guidelines. In Foote, the appellate court held that sentencing a defendant "pursuant to *advisory* Guidelines based on a career offender status that is later invalidated does not meet this remarkably high bar." Id. at 936 (emphasis added). As pointed out by petitioner, the Fourth Circuit has not yet had occasion to address whether the sentencing of a defendant pursuant to *mandatory* guidelines based on a career offender status that is later invalidated meets or does not meet this high bar. As this case may very well be that case, the court would like further briefing that fully develops this issue. To that end, the court will instruct respondent to file a Surreply to that argument. After reviewing all the briefing, the court may calendar this matter for oral arguments.

While there certainly seems to be no shortcuts in resolving these types of cases, which are now legion, respective counsel for the parties are encouraged to discuss amicable resolution.

ORDER

IT IS, THEREFORE, ORDERED that, within 30 days, counsel for petitioner shall file a Supplement to his Amended Response and any Motion to Amend counsel for petitioner deems appropriate, and respondent shall file its Surreply. In light of the § 2255 caseload, the court will entertain any joint motion resetting such deadlines to accommodate counsels' schedules.

Signed: August 29, 2016

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", written over a horizontal line.

Max O. Cogburn Jr.
United States District Judge